IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2007 of 2002
With
FIRST APPEAL No. 2008 of 2002
To
FIRST APPEAL No. 2011 of 2002
With
FIRST APPEAL No. 490 of 1998
To
FIRST APPEAL No. 493 of 1998
With
FIRST APPEAL No. 348 of 1998
To
FIRST APPEAL No. 350 of 1998
With
CROSS OBJECTION No. 267 of 1999
In FIRST APPEAL No. 491 of 1998
With
FIRST APPEAL No. 292 of 1998
To
FIRST APPEAL No. 296 of 1998
With
CIVIL APPLICATION - FOR VACATING STAY No. 2134 of 2004
With
CIVIL APPLICATION - FOR VACATING STAY No. 2132 of 2004
In FIRST APPEAL No. 1491 of 2001

Date of Decision: 11-08-2005

==========

RAJKOT DISTRICT PANCHAYAT - Appellant(s)

Versus

RANJANBEN DEVRAJBHAI KANERIA & 10 – Defendant(s)
(for full cause title, see next sheet)

==========

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

Appearance:
FA: 2007 to 2011/02:
Shri Premal Joshi for District Panchayat, Rajkot

FA: 490 to 493/98
M/s.R.H.Mehta and Sunil Parikh for New India Assurance Company Limited

FA: 348 TO 350/98:
M/s.Mukesh Patel and Chetan Pandya

X-Obj: 267/99:
Shri Chirayu Mehta for claimant

FA: 292 to 296/98:
Shri P.V.Nanavati for United India Insurance Company Limited.
==========

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This group of seventeen First Appeals and Cross Objection No.267 of 1999 in First Appeal No.491 of 1988, arising out of the same accident and common award, are proposed to be disposed of by this judgment.

==========
Whether reporters of Local Papers may be allowed to see the Judgment?

1. New India Assurance Company Limited has filed First Appeal Nos.490 of 1998, 491 of 1998, 492 of 1998, and 493 of 1998, United India Insurance Company Limited has filed First Appeal Nos. 292 of 1998, 294 of 1998, 295 of 1998, 293 of 1998, and 296 of 1998, Rajkot District Panchayat has filed First Appeal Nos.2007 of 2002, 2009 of 2002, 2010 of 2002, 2008 of 2002 and 2011 of 2002, and claimants have filed First Appeal Nos.350 of 1998, 349 of 1998 and 348 of 1998 and Cross Objection N.267 of 1999 in First Appeal No.491 of 1998.

2. Before examining the submissions advanced by learned counsel appearing for the parties, brief mention of essential facts may be necessary. Accident took place in the early morning hours on 31.8.85. Bhagvatsinh Kalyansinh was driving Jeep No.GUD-2651, owned by Rajkot District Panchayat. He was carrying certain officers and elected member of the Panchayat for attending some meeting. When the jeep reached near Kanpara village on National Highway 8-A, truck No.GRW-794 was going ahead. The truck driver gave signal to the jeep, but thereafter, without giving signal,

applied brakes, as a result, jeep collided with the truck. Consequently, five persons traveling in the jeep lost their lives on the spot. Thereafter, their legal heirs preferred claim petitions.

3. The Insurance Companies filed their written statements, alleged negligence of the either party. It is also alleged that persons were traveling in the jeep in the course of their employment, therefore, the Insurance Company should not be fastened with the liabilities. Question fell for consideration was whether truck driver or jeep driver or both are responsible for the accident. If so, to what extent and whether the claimants were entitled to compensation, if yes, the amount and from whom realizable.

4. After recording evidence, the Tribunal concludes that accident was caused by both, the jeep driver and the truck driver, equally responsible therefor. Therefore, claimants were entitled to compensation. Accordingly, various amounts of compensation had been awarded in each case, mention of

which would be made in the later part of the judgment. However, interest has been awarded at the rate of 12% from the date of application till realization from the opponents jointly and severally.

5. Aggrieved by the judgment, appeals and cross objection mentioned above have been filed by the parties. Learned counsel for respective parties are heard extensively on pleas advanced, record perused carefully.

6. First question for determination is responsibility for taking place of accident. Examining and analyzing the evidence minutely and carefully, it is found that neither the driver of jeep nor the driver and cleaner of the truck have been examined before the Claims Tribunal. Further, no eye witness has been examined. Evidence is of Shri Meghraj Chaudhary, Police Officer, Police Station Panshina, who, on commission, examined the driver, cleaner and owner of the truck. These statements have been proved by Police Officer Shri Meghraj Chaudhary (Ex.234). There is panchnama on record besides

the copy of First Information Report recorded at the instance of the driver of the jeep. These documents show that jeep driver gives the version that truck signaled him to overtake, when he was in the process of overtaking, truck driver applied brakes, therefore, accident took place. Truck driver and cleaner (Ex.235 and 237) state that truck was parked on the right side having overheated. While he (truck driver) was opening the radiator, he heard jerk sound and found that the truck was hit by jeep. Panchnama (Mark 133/16) records that truck was on correct side of the road, two feet away from the middle line. It was hit on the right side by left side of jeep. With this kind of evidence, legitimate conclusion which can be drawn is that the truck was moving two feet from the middle of the road on the left side leaving approximately twelve feet road. Statement that the truck was parked on the road, engine being heated, and driver was opening the radiator, cannot be accepted since the jerk would have hit him also since the truck moved from that place to some distance. Therefore, the version that the truck was two feet from the middle of the road to the left and jeep driver was signaled to

move is acceptable. While signaling the jeep driver, truck driver was expected to go to the left, he did not go speedily, resulting in error of judgment by jeep driver resulting in accident. With this assessment and conclusion, the responsibility of truck driver cannot be 50%. His contribution to the taking place of accident at the most can be 40% and that of jeep driver 60%. The finding of Tribunal on this aspect is therefore modified to this extent.

7. M/s. R.H.Mehta and Sunil Parikh, learned counsel for M/s.New India Assurance Company, submitted that liability of M/s.New India Assurance Company Limited is limited to Rs.50,000/-. With a view to buttress this submission, reference is made to Section 95(2)(b)(i), Motor Vehicles Act, 1939, which envisages that:

> *"95. Requirements of policies and limits of liability --*
>
> *xxx xxx xxx xxx xxx xxx*
>
> *(2)(b)(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;*
>
> *xxx xxx xxx xxx xxx xxx "*

This provision has been considered by Full Bench of this Court in *New India Assurance Company Limited v. Thakor Bhemaji Ganeshji & Ors.* (1993(2) GLR 1051) overruling the Division Bench decision of this Court in *State of Gujarat v. Hansa Visanji Rana* (1988(2) T.A.C. 135 : 1988(1) A.C.C. 566) relied upon by the Tribunal in this case. The Full Bench decision limits the liability of the Insurance Company to Rs.50,000/-. Position contrary to the this submission has not been raised by the opponents appearing in these Appeals. Accordingly, we find favour with the plea and hold that the liability of M/s.New India Assurance Company Limited is limited to Rs.50,000/- and finding of Claims Tribunal that it is unlimited is set aside.

8. Shri P.V.Nanavati, learned counsel for M/s.United India Insurance Company Limited, submits that his client is not liable to pay the compensation since the vehicle did not possess permit to ply on public road as per letter Ex.212. Possession of permit is required in terms of Section 96(2) (old) equivalent to Section 149(2) (new). It may be mentioned that

Appeals at the instance of Insurance Company as to quantum and negligence are not maintainable in absence of permission sought from the Tribunal to challenge the Award on merits under Section 110C(2-A), Motor Vehicles Act, 1939, corresponding to Section 170, Motor Vehicles Act, 1988. Since permission has not been sought, Appeals are not maintainable, therefore, liable to be rejected. However, so far as the plea with regard to permit is concerned, it cannot be sustained in view of Apex Court decision in *G.Govindan v. New India Assurance Company Limited and others* (AIR 1999 SC 1398). Consequently, it is rejected.

9. Having come to the conclusion aforesaid, we proceed to determine the question whether just compensation has been awarded in these cases. Claimants seek enhancement while the opponents submit that just compensation has been awarded. Let each case be taken up for consideration.

10. In First Appeal No.350 of 1998 (MACP No.103 of 1986), legal heirs of Dr.Devrajbhai B.Kaneria submit that deceased was

42 year old. His salary was Rs.3,300/- per month at the time of accident and it could be Rs.7,360/- in 1998. Claims Tribunal applied multiplier of 15, assessing his income at Rs.3,600/- and loss of dependency Rs.2,400/-, after making deduction of 1/3rd, arrived at compensation of Rs.4,32,000/- adding Rs.10,000/- (conventional amount). Accordingly, compensation of Rs.4,42,000/- is awarded. Submission interalia is that deceased would have earned more income after declaration of 4th Pay Commission, had he remained alive and continued in service. Age of retirement was not taken into consideration, multiplier of 20 ought to have been applied. Compensation for mental shock has not been awarded. Instead of 12% interest, 15% interest would be just and reasonable. Therefore, enhanced compensation of Rs.5,50,000/- with interest at the rate of 15% per annum is sought. We find, determination of compensation by Tribunal is not arrived at by application of well known accepted principles applied by this Court in *Ritaben alias Vanitaben and another v. Ahmedabad Municipal Transport Service and another* (2000 ACJ 153) on the basis of Apex Court decision in *Smt.Sarla Dixit and*

another v. Balwant Yadav and others (AIR 1996 SC 1274). Therefore, fresh assessment is required to be undertaken in all these cases. In this case, monthly income of deceased was Rs.3,300/-. Therefore, compensation can be worked out thus:

Rs.3,300/- x 3 = 9,900, 1/2 of 9,900 = 4950 – 1/3rd of 9,900 = 3,300 x 12 = 39,600 x 15 = 5,94,000/- + 5,000/- (consortium) + 10,000/- (loss of expectancy of life) + 3,000 (funeral expenses) = Rs.6,12,000/-. Accordingly, First Appeal No.350 of 1998 is allowed, award is modified. The claimants have been awarded Rs.4,42,000/- by MACT, therefore, they are held entitled to enhanced compensation of Rs1,70,000/-. Appellants are entitled to total compensation of Rs.6,12,000/- payable with interest at the rate of 12% p.a. from the date of application till payment, rejecting the contention of the claimants for award of interest at the rate of 15% p.a. Cost of this appeal to be suffered by the parties.

11. In First Appeal No.349 of 1998 (MACP No.104 of 1986), the deceased Pragjibhai P. Patel was Nutritious Officer, Class-I.

He was M.A., LL.B. He was drawing Rs.2,615/- per month (Ex.108). It is stated that his salary would have increased to Rs.10,880/- per month in 2002 (Ex.179). Accordingly, by Tribunal, his income is taken Rs.3,000/-, loss of dependency, Rs.1,000/- per month. He was 43 year old at the time of accident. Multiplier of 15 is applied, compensation of Rs.3,60,000/- is worked out, adding Rs.10,000/- (conventional amount) taking the total amount of compensation to Rs.3,70,000/-. Taking the salary of deceased at Rs.2,615/-, and age 43, applying multiplier of 15, compensation can be worked out thus:

Rs.2,615/- x 3 = 7,845, 1/2 of Rs.7,845 = 3,923 – 1/3rd of 3,923 = 2,615 x 12 = 31, 380 x 15 = 4,70,700 + 10,000 (loss of expectancy of life) + 5,000 (consortium) + 3,000 (funeral) = Rs.4,88,700/-. Accordingly, appeal is allowed, award is modified. Claimants are held entitled to compensation of Rs.4,88,700/- with interest at the rate of 12% p.a. from the date of application till payment. The claimants have been awarded Rs.3,70,000/- by MACT, therefore, they are held

entitled to enhanced compensation of Rs.1,18,700/-.Plea with regard to rate of interest at 15% p.a. Is rejected. Cost of this appeal to be suffered by parties.

12. In First Appeal No.348 of 1998 (MACP No.105 of 1986), deceased Govindbhai J.Patel was Vice President of District Panchayat. He was 58 year old. He remained Member, Legislative Assembly twice in 1972 and 1976. He possessed 40 acres of land with good agricultural potential, earning Rs.60,000/- to Rs.70,000/- p.a. He was associated with number of institutions (Ex.38 to 51). Through allowances from such meetings, he was earning Rs.30,000/- to Rs.40,000/- per annum. It is stated that his annual income was Rs.1,00,000/-. This version has not been accepted by the Claims Tribunal. His age has been held 60 years, multiplier of 5 applied. While assessing the compensation, Tribunal also considered that he was a busy politician unable to attend agricultural operations, which must have been looked after through his son and labour. Otherwise, he was an old man busy moving here and there attending meetings. The Tribunal has assessed the

compensation taking his income Rs.4,500/- but we find no basis for arriving at this figure. Claimants have neither filed any Income Tax Returns nor receipts receiving amounts on sale of agricultural produce and meeting allowances from various institutions, proper evidence could be led, which means, at this age and stage, deceased was not earning the income pointed out by his son who has appeared as witness in this case. Therefore, it would be just and proper to fix income at Rs.2,250/-, and compensation is worked out thus;

Rs.2,250/- x 3 = 6,750, 1/2 of 6,750 = 3,375 – 1/3rd of 3,375 = 2,250 x 12 = 27,000 x 8 = 2,16,000 + 10,000 (loss of expectancy of life) + 3,000 (funeral) = Rs.2,29,000/- Compensation of Rs.1,00,000/- has been awarded. Through this appeal, enhancement of Rs.1,50,000/- is sought. The claimants have been awarded Rs.1,00,000/-, therefore, they are held entitled to enhanced compensation of Rs.1,29,000/-. Accordingly, appeal is allowed, award is modified. Claimants are held entitled to total compensation of Rs.2,29,000/- payable with interest at the rate of 12% p.a. from the date of application till

payment. Claim for interest at the rate of 15% p.a. from the date of application till payment is rejected. Cost of this appeal shall be suffered by the parties.

13. In Cross Objection No.267 of 1999 in First Appeal No.491 of 1998 (MACP No.72 of 1986). In this case, deceased is Keshavbhai Kacha. He was drawing salary of Rs.2,830/- at the time of accident which could increase to Rs.7,600/- in August 1999. The Tribunal takes his income at Rs.3,000/-, making deduction of 1/3rd towards personal expenditure and applying multiplier of 15 on remaining amount, compensation of Rs.3,60,000/- is worked out and by adding Rs.10,000 (conventional amount) compensation of Rs.3,70,000/- is awarded. Date of birth of deceased is 16.8.1941, therefore, at the time of accident, he was 44 year old. He was drawing salary of Rs.2,830/-. Therefore, like other cases, compensation can be worked out thus:

Rs.2,830 x 3 = 8,490, 1/2 of 8,490 = 4,245 – 1/3rd of 4,245 = 2,830 x 12 = 33,960 x 15 = 5,09,400/- + 10,000 (loss of

expectancy of life) + 5,000 (consortium) + 3,000 (funeral expenses) = Rs.5,27,400/-. Accordingly, Appeal is allowed, award is modified, total compensation of Rs.5,27,400/- is awarded with interest at the rate of 12% p.a. Claim for interest at the rate of 15% p.a. is rejected. The claimants have been awarded Rs.3,70,000/- by MACT, therefore, they are held entitled to enhanced compensation of Rs.1,57,000/-. Cost of this Appeal shall be suffered by the parties.

14. What emerges out of the aforesaid discussion, we settle the question of liability with regard to payment of compensation. M/s.United India Insurance Company Limited has been held 40% liable. Accordingly, 40% of the compensation with proportionate cost and interest at the rate of 12% p.a. from the date of application till payment shall be paid by this Company. M/s.New India Assurance Company Limited has been held liable to pay Rs.50,000/- with proportionate cost and interest at the rate of 12% p.a. from the date of application till payment. This amount shall be paid by M/s.New India Assurance Company Limited in MACP

Nos.103/86, 73/86, 104/86 and 32/86. Remaining amount of compensation shall be paid by Rajkot District Panchayat with proportionate cost and interest at the rate of 12% p.a. from the date of application till payment. Excess amount deposited by M/s.New India Assurance Company Limited be refunded. M/s.United India Insurance Company Limited will deposit the amount of compensation within three months. Similarly, Rajkot District Panchayat will deposit the balance amount of compensation with proportionate cost and interest at the rate of 12% p.a. form the date of application till payment within three months. Thereafter it be paid to the claimants on proper verification.

15. Civil Applications shall stand disposed of.

(Bhawani Singh)
Chief Justice

(H.K.Rathod)
Judge

(sunil)